UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LINDA GREGORY,	§	
	§	
Plaintiff	§	
	§	
v.	§	
	§	C.A. NO. V-90-28
THOMAS L. JACOBS &	§	
ASSOCIATES INC. AND	§	
ATLANTIC RICHFIELD	§	
COMPANY,	§	
	§	
Defendants	§	

FINAL JUDGMENT

In accordance with the Findings of Facts and Conclusions of Law entered in the above referenced action, entry of final judgment is appropriate.

It is therefore

ORDERED that Plaintiff Linda Gregory shall take nothing by way of her claims against Defendants THOMAS L. JACOBS & ASSOCIATES, INC. and ATLANTIC RICHFIELD COMPANY in this action.

All costs shall be borne by the party

incurring same.

THIS IS A FINAL JUDGMENT.

The Clerk will enter this Order and provide all parties with a true copy.

Signed this 25th day of February, 1994.

John D. Rainey
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LINDA GREGORY,	§	
	§	
Plaintiff	§	
	§	
v.	§	
	§	C.A. NO. V-90-28
THOMAS L. JACOBS &	§	
ASSOCIATES INC. AND	§	
ATLANTIC RICHFIELD	§	
COMPANY,	§	
	§	
Defendants	§	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This above referenced case was tried on its merits before the Court on January 25-26, 1993. Having considered the pleadings, the record and the evidence presented by the parties, the Court hereby makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff is a resident of the State of Texas; Defendants Atlantic Richfield Company ("ARCO") and Thomas L.

Jacobs & Associates, Inc. ("TLJ") are foreign corporations duly authorized to transact business in the state of Texas.

2. Plaintiff was born on January 7, 1954 and is currently 40 years old. She has an 11th grade education and a General Equivalency Diploma ("GED"). Prior to her employment at ARCO, she obtained experience as both a restaurant and bar waitress.

3. Plaintiff was employed as a lease pumper by ARCO Oil and Gas Company, a subsidiary of ARCO. She commenced employment on June 28, 1976. As an employee of ARCO subsidiary, Plaintiff was entitled to benefits, including long term disability benefits, under ARCO's duly organized and existing written long term disability plan. This plan is currently entitled "Long Term Disability Plan of Atlantic Richfield Company and its

Participating Subsidiaries" ("the Plan").

4. The Plan is qualified under the provisions of the Employee Retirement Income Security Act of 1974, 29 U.S.C §1001 et seq. ("ERISA").

5. At all times pertinent to this lawsuit, the Plan defined "disability" as the inability to "engage in any gainful occupation of employment for which [the employee is] reasonably fitted by education, training or experience regardless of whether any such occupation or employment is available within or offered to [the employee] by [ARCO]."

6. Plaintiff worked full-time at ARCO from 1976 to June 15, 1983 when she injured her back at work. At that time, the Plan was administered by Aetna Life Insurance Company ("Aetna"). On October 19, 1984, Aetna determined that Plaintiff was disabled. She was classified as an

"inactive employee", and the claim for long term disability benefits, retroactive to December 17, 1983, was approved.

7. At the time Plaintiff was granted long term disability benefits, her basic monthly benefit under the plan was $1,137.87 per month.

8. On September 10, 1984, Plaintiff applied for social security disability benefits; however, her application was denied on October 4, 1984. Her request for reconsideration was also denied, and she appealed this decision to an Administrative Law Judge. On February 25, 1985, the Administrative Law Judge upheld the denial of Plaintiff's application for social security disability benefits.

9. By an Administrative Agreement dated May 1, 1987, Defendant TLJ became the administrator of the Plan.

10. In regard to the authority and

responsibilities of TLJ as to claims submitted under the Plan, the Administration Agreement provided:

> [ARCO] has appointed [TLJ] claim administrator with authority to make determinations regarding Benefit Entitlement under the Plan, including review of denied claims. [TLJ] agrees to be named fiduciary, as defined in ERISA, for the purpose of claim determination and review of denied claims. [TLJ's] decision on any claim shall be final.

11. In August 1988, TLJ reviewed Plaintiff's claim that she was totally disabled within the meaning of the Plan. Plaintiff was requested to complete a TLJ form describing her continued disability. Plaintiff's treating physician, Dr. Mohammed Khalil, was also requested to

fill out a medical report detailing Plaintiff's physical condition.

12. The above-noted report from Dr. Khalil, signed and dated August 2, 1988, indicates objective findings of lumbar radiculopathy, status post laminectomy and foraminotomy, status post nucleolysis, degenerative changes at L4-5 and L5-S1 by MRI, small herniations at L4-5 and L5-S1 by MRI, and chronic lumboligatmentum muscle strain.

13. Pursuant to the provisions of the Plan, TLJ arranged an independent medical examination by Dr. Lawrence Wilk, a board certified orthopaedic surgeon. Dr. Wilk's experience in orthopaedic surgery includes treatment of herniated discs and laminectomies.

14. On November 7, 1988, Dr. Wilk examined Plaintiff. He took X-rays of her back and reviewed other X-rays, MRI film

and bone scans brought by Plaintiff to the examination. In the ensuing report submitted to TLJ, Dr. Wilk stated that the x-ray and test information he obtained indicated results within the normal limits. Dr. Wilk's only objective finding was a well-healed laminectomy scar on Plaintiff's back. He indicated that all other information obtained at this examination was purely subjective. Dr. Wilk further noted that Plaintiff has chronic low back pain; however, he found Plaintiff to have normal reflexes, neurological findings and gait pattern.

15. In regard to any future activity, Dr. Wilk found that Plaintiff was totally disabled from performing her regular occupation as a pumper and that she should refrain from bending, stooping, squatting or lifting objects over 15-20 pounds. Dr. Wilk also advised that

Plaintiff was capable of limited sedentary activities and that he found her to be a good candidate for vocational rehabilitation as she was an "intelligent, motivated young lady."

16. After TLJ received Dr. Wilk's report, Plaintiff's claim was reviewed by Dr. Richard Blonsky, TLJ's medical director. Dr. Blonsky is board certified in neurology and pain management. Dr. Blonsky indicated in his review notes that Plaintiff would need a mild work hardening program and probably a pain management program, and he stated that Plaintiff would never return to her prior job. Dr. Blonsky concluded, however, that Plaintiff "surely could do other lighter work", and he found no reason "why she would be restricted only to sedentary work."

17. Based upon the medical information contained in Plaintiff's

claim, specifically including information supplied by Plaintiff, Dr. Khalil's analysis and the medical information provided by Dr. Wilk and Dr. Blonsky, TLJ determined that Plaintiff's condition did not meet the definition of "total disability" under the Plan by reason of her physical impairments. TLJ notified Plaintiff of this determination of December 15, 1988 and advised her that her benefits were to be terminated and her final payment would be received on or around January 1, 1989. TLJ also advised Plaintiff of the procedures to follow in appealing this decision.

18. Plaintiff employed an attorney and appealed TLJ's determination regarding the termination of her benefits.

19. TLJ was subsequently furnished with three medical reports from Plaintiff's treating physicians. Dr.

Kahlil sent two reports dated December 21, 1988 and January 3, 1989 in which he offered his impression that Plaintiff had degenerative changes at L4-5 and L5-S1; that she had herniated discs at L4-5 and L5-S1 by MRI; that she had a defect at L4-5 by myelogram and that she had lumbar radiculopathy by EMG. Dr. Kahlil further noted that Plaintiff's status was post lumbar laminectomy and foraminotomy and post chemonucleolysis. On December 28, 1988, Dr. Christopher Chaput, Plaintiff's neurosurgeon, submitted a report in which he stated that Plaintiff "demonstrated HNP at L4-5 and L5-S1" and that a recent myelogram had confirmed the same. Dr. Chaput also offered his opinion that Plaintiff was unable at that time to perform sedentary work.

20. MRI films were not submitted to TLJ in connection with the above-mentioned

reports.

21. On March 9, 1989, TLJ's Benefit Review Committee considered Plaintiff's appeal and reviewed all of the evidence in her claim file. The Benefit Review Committee upheld TLJ's previous decision that Plaintiff was not totally disabled as defined by the Plan.

22. Jim Radke, rehabilitation manager for TLJ, participated in the March 9, 1989 meeting. After the Benefit Review Committee reached its decision, it directed Mr. Radke to identify sedentary occupations appropriated for Plaintiff. In the event he was unable to identify any such occupations, the claim associate responsible for Plaintiff's file was directed to submit the claim back to the Benefit Review Committee for further proceedings.

23. Mr. Radke identified several

occupations he deemed appropriate for Plaintiff including the following: waitress, children's attendant, coat-checker, counter clerk, household companion and hostess.

24. TLJ notified Plaintiff's attorney by letter dated March 21, 1989 that the Benefit Review Committee upheld the decision to terminate Plaintiff's benefits.

CONCLUSIONS OF LAW

1. Plaintiff's claim of total disability is governed by the Employee Retirement income Security Act of 1974 ("ERISA") 29 U.S.C. §1001, et seq, and the Plan.

2. The Administration Agreement specifically gave TLJ, as plan administrator, discretionary authority to make determinations regarding eligibility

for benefits and discretionary authority to review denied claims. The broad discretionary authority afforded TLJ encompassed the determination and review of disability claims.

3. Because the Administration Agreement granted TLJ sufficient discretionary authority to determine Plaintiff's eligibility for long term disability benefits, this Court must review TLJ's decision utilizing an abuse of discretion standard. Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 115 (1989); Pierre v. Connecticut General Life Insurance Co., 932 F.2d 1552, 1562 (5th Cir. 1991). In order for this Court to find an abuse of discretion, it must determine that TLJ acted arbitrarily and capriciously. Salley v. E. I. Dupont de Nemours & Co., 966 F.2d 1011 (5th Cir. 1992).

4. This Court's determination of whether TLJ based its decision to terminate Plaintiff's long term disability benefits on sufficient evidence, and therefore did not act arbitrarily or capriciously, must be made on the basis of information available to TLJ at the time in 1989 when it reached the decision to terminate Plaintiff's benefits. Wilbur v. Arco Chemical Co., 974 F.2d 631, 639 (5th Cir. 1992); Denton v. First Nat. Bank, 765 F.2d 1295 (5th Cir. 1985); Sandoval v. Aetna Life & Casualty Insurance Co., 967 F.2d 377 (10th Cir. 1992)

5. As of March 9, 1989, there was little, if any, objective medical evidence that Plaintiff remained totally disabled from any occupation as a result of her physical impairments. To the contrary, TLJ's claim file contained sufficient evidence on which TLJ could base its

decision that Plaintiff was not totally disabled as a result of her physical impairments.

6. Based on the information available to TLJ at the time it reached its decision, TLJ did not act arbitrarily or capriciously in deciding that Plaintiff was not totally disabled and was therefore not eligible for long term disability benefits.

7. Plaintiff has failed to prove that TLJ abused its discretion; therefore, judgment should be entered in favor of ARCO and TLJ on Plaintiff's claims.

8. Bad faith was not established; therefore, attorneys fees are not recoverable.

Any finding of fact that constitutes a conclusion of law is hereby adopted as a conclusion of law. Any conclusion of law that constitutes a finding of fact is

hereby adopted as a finding of fact.

A Final Judgment shall be entered in accordance with the above findings and conclusions.

The Clerk will enter this Order and provide all parties with a true copy.

Signed this the 25th day of February, 1994.

_____

John D. Rainey
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60235

D.C. Docket No. 90-CV-28

LINDA J. GREGORY,

Plaintiff-Appellant

versus

THOMAS L. JABOSON &
ASSOCIATES, INC., AND
ATLANTIC RICHFIELD,

Defendants-Appellees.

Appeal from the United States District
Court for the
Southern District of Texas

Before GRAAFEILAND[1], JOLLY and WIENER, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the record on appeal and was argued by

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[1] Circuit Judge of the Second Circuit, sitting by designation.

counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the District Court in this cause is affirmed.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

February 15, 1995.

ISSUED AS MANDATE: Apr 21 1995

A true copy

Test:
Clerk, U.S. Court of Appeals,
Fifth Circuit

By _____
Michael R. Milby
Deputy

New Orleans, Louisiana Apr 21 1995

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 94-60235

LINDA J. GREGORY,

Plaintiff-Appellant,

versus

THOMAS L. JACOBSON & ASSOCIATES, INC., AND ATLANTIC RICHFIELD,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas

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Before, VAN GRAAFEILAND,* JOLLY, and WIENER, Circuit Judges.

PER CURIAM:**

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* United States Court of Appeals, Second Circuit Judge sitting by designation.

** Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide

After a review of the briefs, the record, and the very good arguments of counsel, we must conclude that the district court did not err in upholding the decision of the plan administrator, Thomas L. Jacobson & Associates, Inc. The district court applied the proper--abuse of discretion--in reviewing the decision of the plan administrator to deny disability benefits in this case. See Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 113, 115, 109 S.Ct. 948, 956-57, 103 L.Ed.2d 80 (1989) (holding review is limited to abuse of discretion when plan confers discretion on plan administrator in determining benefits eligibility). Reviewing the administrator's decision

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particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

under this standard, as we must, we hold that the district court did not err in affirming Jacobson's decision to deny the appellant, Linda J. Gregory, disability benefits. Although Gregory's counsel vigorously argued that Gregory had a case for disability, and although counsel effectively pointed to weaknesses in Jacobson's evaluation of Gregory's disability, we are still faced with the undeniable fact that the record reflects substantial evidence supporting Jacobson's decision. We therefore cannot conclude that the administrator's decision was arbitrary. The judgment of the district court is therefore

A F F I R M E D.

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-60235

LINDA J. GREGORY,

Plaintiff-Appellant

versus

THOMAS L. JACOBS & ASSOCIATES, INC., and ATLANTIC RICHFIELD,

Defendants-Appellees

Appeal from the United States District Court for the Southern District of Texas

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Before, VAN GRAAFEILAND*, JOLLY and WIENER, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of appellant for leave to file a petition for rehearing out of time is GRANTED and the

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* United States Court of Appeals, Second Circuit sitting by designation.

petition for rehearing filed in the above cause is DENIED.

ENTERED FOR THE COURT:

CLERK'S NOTE:
SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE

E. GRADY JOLLY
UNITED STATES CIRCUIT JUDGE